

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

MARTIN JAMES DEKOM, SR.,
Debtor.

CASE NO.: 19-30082-KKS
CHAPTER: 13

**ORDER DENYING CONFIRMATION OF SIXTH AMENDED PLAN
(DOC. 244) AND DISMISSING CASE WITH PREJUDICE**

THIS CASE came before the Court for a final evidentiary hearing on February 12, 2020 to consider, among other things, confirmation of Debtor's *Chapter 13 Plan, Sixth Amended* ("Sixth Plan," Doc. 244). As a result of the final evidentiary hearing, on February 12, 2020, this Court entered *Findings of Fact and Conclusions of Law in Support of Denial of Confirmation of Debtor's Sixth Amended Plan and Grant of Stay Relief to Nationstar Mortgage, LLC d/b/a Mr. Cooper* ("Findings," Doc. 297). Based on a motion Debtor filed after the final hearing, the Court imposed a sanction pursuant to Rule 9011, and ordered this case dismissed with prejudice for one year.¹ For the reasons set forth in the 9011 Order and

¹ *Order Denying Debtor's Notice [Sic] and Motion to Disqualify Miller and Hart as Trustees [Sic] (DOC. 282) and Imposing Rule 9011 Sanctions* ("9011 Order," Doc. 299).

Findings, as well as those set forth below, confirmation is denied and Debtor's case is due to be dismissed with prejudice.

The Bankruptcy Code provides several avenues for dismissal of a case. Among them, 11 U.S.C. § 349(a) provides, in pertinent part:

Unless the court, for cause, orders otherwise . . . the dismissal of a case under this title [does not] prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.²

The Eleventh Circuit Court of Appeals has held that a determination to dismiss "for cause" involves a review of the totality of the circumstances and equitable considerations.³ Abuse of the bankruptcy process or an inability to propose a feasible plan support a finding of lack of good faith and constitute grounds for dismissal.⁴ Dismissal of a petition for lack of good faith is appropriate particularly when there is no realistic possibility of an effective reorganization and it is evident that the debtor seeks merely to delay or frustrate the legitimate efforts of secured creditors to enforce their rights.⁵ In the case

² 11 U.S.C. § 349(a) (2020). *See* 3 Collier on Bankruptcy P 349.02 (16th ed. 2020).

³ *In re Albany Partners, Ltd.*, 749 F.2d 670, 674 (11th Cir. 1984).

⁴ *Id.*

⁵ *Id.* (citations omitted).

at bar, Debtor has met all factors set forth by the Eleventh Circuit to support a “for cause” dismissal. As that Court has explained:

[W]henver a Chapter 13 petition appears to be tainted with a questionable purpose, it is incumbent upon the bankruptcy courts to examine and question the debtor’s motives. If the court discovers unmistakable manifestations of bad faith, as we do here, confirmation must be denied. Unmistakable manifestations of bad faith need not be based upon a finding of actual fraud, requiring proof of malice, scienter or an intent to defraud. We simply require that the bankruptcy courts preserve the integrity of the bankruptcy process by refusing to condone its abuse.⁶

Dismissal with prejudice is a severe sanction to which courts should resort only infrequently and in instances where there has been both bad faith and prejudice to creditors.⁷ Here, the Court finds both. This case should be dismissed with prejudice pursuant to 11 U.S.C. §349(a), as well as for the reasons and on the authority set forth in the Findings and 9011 Order.

For the reasons stated, it is

ORDERED:

1. Confirmation of the Sixth Plan is **DENIED**.

⁶ *In re Waldron*, 785 F.2d 936, 941 (11th Cir. 1986).

⁷ *Hall v. Vance*, 887 F.2d 1041 (10th Cir. 1989). 3 Collier on Bankruptcy P 349.02 (16th ed. 2020).

2. This case is DISMISSED, with prejudice. Debtor shall not be permitted to file a petition for relief under the Bankruptcy Code anywhere in the United States for a period of one (1) year from the date of this Order.

DONE AND ORDERED on April 8, 2020.

A handwritten signature in black ink, appearing to read 'K. Specie', is written over a horizontal line.

KAREN K. SPECIE
Chief U. S. Bankruptcy Judge

cc: all parties in interest, including:

Martin James Dekom, Sr.
9050 Sunset Dr.
Navarre, FL 32566